

REMARKS

In the Examiner's response in paragraph 7 of the office action to the arguments made by Applicant in the previous amendment it is asserted that:

1. Applicant is asserting an uncommon usage of the term "breathable filtering material" contrary to its ordinary meaning making it necessary to provide a definition in the written description sufficient to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term; and
2. The Examiner is entitled to use the common denotation of the term "breathable" and further the term "breathable" within the context of fabrics wherein the term refers to the ability of a fabric or clothing to transmit air and/or moisture.

The invention claimed in this application is in the facemask art and not the fabric art. Claim 1 recites the combination of a facemask and a gasket. The gasket is defined as formed of a "breathable filtering material." Thus, the meaning of the term "breathable" must be determined in the facemask art and not the fabric art.

Applicant is using the term breathable in its ordinary meaning in the facemask art in the written description. Attached is a copy of a document entitled "Mediawebserver[1].pdf" which is from the 3M Company. In this document the properties of facemasks are shown. One property shown is "Breathability." There is a footnote 3 which defines breathability and provides a Military Specification therefore. The footnote reads:

3 Breathability, Delta P (ΔP)

The pressure drop across a facemask, expressed in mm water/cm². The higher the Delta P, the more difficult the mask is to breathe through.

The **Method 1 Military Specifications, MIL-M- 36945C 4.4.1.1.1** The specimen mask materials are placed in a special test fixture that measures the pressure on both the inlet and exit sides of the mask during a forced flow of air through the mask. The differential pressure drop across the mask is then measured.

Note: the MIL-M- 36945C 4.4.1.1.1 testing method differs from other Breathability testing methods. These values are on different scales and parameters and cannot be compared.

This definition is consistent with the written description in this application and Applicant's assertion of the meaning of the term in the context of this invention. The portions of the written description cited by the examiner shows the term was used as it is commonly understood in the facemask art.

Applicant's written description the term "breathable" is used in the context of "minimizing the pressure differential" (Page 2, Lines 11-13), "forming a filtering closure" (Page 3, Lines 4-6), and "in order to not create a so-called airtight junction but instead creates a breathable closure that actually covers all the contours of the different geometrical surface to provided a permeable closure, having filtering properties" (Page 16, Lines 9-13).

The definition in the Military Specification designates Breathability as Delta P and states that the higher the Delta P, the more difficult the mask is to breathe through. Breathability is determined by measuring the "differential pressure" drop in the Military Specification, where applicants refers to this same property, breathability, as "pressure differential" on page 2, Lines 11- 13 as pointed out by the examiner. Applicant says the facemask of his invention minimizes the pressure differential which according to the Military Specification makes it easier to breath. Thus, applicants assertion that the term breathability does mean passing "a sufficient amount of air for breathing" which is clearly different and not obvious in light of Niemeyer.

Based on the above it is clear that the application is in condition for allowance and such allowance is respectfully requested.

CONCLUSION

In light of the foregoing, Applicant respectfully submits that all rejections have been overcome and that the pending claims are in condition for allowance.

Applicants believe that no fees are necessitated by the present Amendment. However, in the event that any fees are due, the Commissioner is hereby authorized to charge any such fees to Deposit Account No. 06-0923.

If the Examiner believes that a telephone conversation with Applicant's attorney would expedite allowance of this application, the Examiner is cordially invited to telephone the undersigned attorney at the number provided below.

Dated: March 4, 2009

Respectfully submitted,

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